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April 22, 1999

Ms. Magalie Roman Salas Secretary Federal Communications Commission The Portals 445 Twelfth Street, SW Washington, D.C. 20554 APR 22 1999

APR 2 2 1999

APR 2 2 1999

Re:

Petition for Rulemaking to Change Community

of License of Station KAYW(FM) from

Meeker, Colorado to Battlement Mesa, Coloroda

Dear Ms. Salas:

Enclosed for filing on behalf of Western Slope Communications, L.L.C. ("Western Slope"), permittee of Station KAYW(FM), Meeker, Colorado are an original and four copies of a Petition for Rulemaking to amend the Federal Communications Commission's ("FCC") FM Table of Allotments by changing the community of license for station KAYW(FM) from Meeker, Colorado to Battlement Mesa, Colorado.

The FCC has advised us that no filing fee is due unless this petition is granted and Western Slope submits an application to modify its construction permit. If you have any questions regarding the enclosed petition, please contact the undersigned.

Sincerely.

Michael K. Hamra, Esq.

Enclosures

No. of Copies rec'd Ot 4
List A B C D E

MM B

ORIGINAL

BEFORE THE FEDERAL COMMUNICATIONS COMMISSION WASHINGTON, D.C. 20554

In the Matter of)	MM Docket No.
Amendment of Section 73.202(b))	MM Docket No.
Table of Allotments)	RM- APR 2 2 1999
FM Broadcast Stations)	~ ~ 1999
(Meeker and Battlement Mesa, Colorado))	OFFICE OF THE SECRETARY

PETITION FOR RULEMAKING

Western Slope Communications, L.L.C. ("Western Slope"), permittee of Station KAYW(FM), Meeker, Colorado, hereby petitions the Federal Communications Commission ("FCC" or "Commission") to amend its FM Table of Allotments, 47 C.F.R. § 73.202(b), by reallocating FM channel 251C from Meeker, Colorado to Battlement Mesa, Colorado. Western Slope also requests that the Commission modify the construction permit for Station KAYW(FM) to reflect this change.

On October 28, 1997, the Commission issued a construction permit to Western Slope to construct and operate a Class C FM radio station in Meeker, Colorado (hereinafter, "KAYW"). An engineering analysis performed for Western Slope shows that the unique location of the community of Meeker severely limits the transmitter site locations where city grade coverage of Meeker can be achieved. The current Channel 251C allocation at Meeker restricts Western Slope's ability to provide coverage to its targeted community. Meeker is

The construction permit for KAYW has been extended until October 28, 2000. See letter to Ms. Magalie Roman Salas, Secretary, Federal Communications Commission from Tom W. Davidson, Esq., dated March 19, 1999.

² <u>See</u> Exhibit A, Engineering Statement of Timothy C. Cutforth, P.E., dated December 1, 1998 ("First Engineering Statement").

³ <u>Id.</u> at 1.

located in a deep valley that runs from east to west and is rimmed with mountains. While a transmitter site for a Class C facility can often be located anywhere within 50 kilometers of the targeted community, the mountainous terrain of Meeker limits the placement of a transmitter from which city grade coverage of Meeker can be provided to areas located directly east or west of Meeker. Positioning KAYW's transmitter in a location which provides city grade coverage to the community of Meeker would preempt signal coverage to most of the population in the region other than Meeker, which has a population of 2,098 (covering 1,393 square kilometers). As a result, construction of KAYW in Meeker would prevent Station KAYW from providing service to a population base sufficient to sustain the station's operation.

Battlement Mesa is a community located in an area with less severe terrain.

Consequently, a radio station located at Battlement Mesa can cover a much larger area than in Meeker. Thus, moving the Station KAYW operation from Meeker to Battlement Mesa will afford Western Slope more latitude in selecting a transmitter site to maximize coverage and service to the public in the surrounding environs. Accordingly, Western Slope is requesting that the Commission initiate a rulemaking proceeding to reallocate channel 251C from Meeker to Battlement Mesa, Colorado and reserve this reallocated channel for Western

<u>Id</u>.

^{5 &}lt;u>Id.</u>

¹⁹⁹⁰ Census, U.S. Census Bureau, United States Department of Commerce. <u>See, http://www.census.gov/cgi-bin/gazetteer_city=battlement+mesa&state=co&zip=</u> ("1990 Census").

⁷ <u>Id.</u>

Slope and Station KAYW.⁸ As demonstrated by the attached Engineering Statement, there are no existing unused allocations in Battlement Mesa or any pending rulemaking proceedings for a Class C assignment to Battlement Mesa.⁹ Thus, if channel 251C is reallocated to Battlement Mesa, it can be reserved for Station KAYW(FM).¹⁰

Channel 251C is available in Battlement Mesa and a reallocation there meets all the FCC's applicable technical rules.¹¹ The proposed allotment is mutually exclusive with Station KAYW(FM)'s present assignment and thus the allotment and modification can be accomplished in one step under the FCC's rules. In the event that there is future interest in establishing a local transmission service in Meeker, channel 233C1 is available and can be allocated to Meeker without any site restriction.¹²

Battlement Mesa is a thriving community and, according to the Battlement Mesa Information Center, its population is growing at a fast rate. Battlement Mesa is located off of interstate I-70, one of Colorado's major interstate highways. ¹³ Battlement Mesa is a distinct community and has its own post office, police department, elementary school, middle and high schools, two banks, a medical office building, a golf course, several restaurants and gas

See 47 C.F.R. 1.420. The Commission's rules permit the modification of a license or permit of an FM station to specify a new community where the amended allotment would be mutually exclusive with the licensee's or permittee's present assignment.

⁹ <u>Id.</u> First Engineering statement at 1.

First Engineering Statement at 4. See also, Amendment of the Commission's Rule Regarding Modification of FM and TV Authorizations to Specify a New Community of License, Report and Order, 4 FCC Rcd 4870, 4873 (1989); recon granted in part, 5 FCC Rcd 7094 (1990) ("Community of License").

^{11 &}lt;u>Id.</u> at 2-3.

¹² Id. at 3.

Rand McNally 1998 Atlas.

stations, and its own airport for non-commercial planes. The industries in Battlement Mesa include residential and commercial construction as well as mining for baking soda.

In determining whether to amend the FM Table of Allotments, the Commission compares the proposed allotment plan to the existing allotments for the communities involved.¹⁴ If the Commission determines that the proposed allotment plan will result in a net service benefit for the communities involved (that is, if the plan would result in a preferential arrangement of allotments), then the Commission will adopt the proposal.¹⁵ In determining whether the proposal will result in a preferential arrangement of allotments, the Commission applies its FM allotment priorities and policies.¹⁶ The Commission's FM allotment priorities are: (1) first full-time aural service; (2) second full-time aural service; (3) first local transmission service; and (4) public interest matters.¹⁷

The Commission's first two allocation priorities are not relevant in the current situation. No white or grey areas would be served by allocation of channel 251C in either Meeker or Battlement Mesa. The presently authorized KAYW(FM) service area and the proposed Battlement Mesa service area are fully encompassed by the 0.5 mV/m contour of Station KRAI Craig, Colorado. Additionally, KKGM at Grand Junction, Colorado; KRGS at Rifle, Colorado; KNZZ at Grand Junction, Colorado; and KZKS at Rifle, Colorado, each

Revision of FM Assignment Policies and Procedures, Second Report and Order, 90 FCC 2d 88 (1982).

^{15 &}lt;u>Id.</u>

^{16 &}lt;u>Id.</u>

Id. Revision of FM Assignment Policies and Procedures, Second Report and Order, 90 FCC 2d 88 (1982).

First Engineering Statement at 3.

^{19 &}lt;u>Id.</u>

provide primary service to most of the primary service area of a channel 251C operation in Meeker and in Battlement Mesa; at least 25 other radio stations cover portions of the primary service areas of both a Meeker and Battlement Mesa operation.²⁰

Western Slope's proposed change would result in a preferential arrangement of allotments and advance the Commission's FM allotment priorities. Specifically, the proposed change would provide Battlement Mesa with its first local transmission service, thereby advancing the Commission's third priority. Although the Commission has expressed concern about a change to the Table of Allotments that would deprive a community of its first local radio transmission service, station KAYW(FM) has not been constructed, is not operational and is not providing radio service to the community of Meeker. Accordingly, by reallocating channel 251C to Battlement Mesa, the Commission will not be depriving the community of Meeker of an existing local service and will not be harming the public interest.

The proposed reallocation of Channel 251C to Battlement Mesa would enable Station KAYW(FM) to serve a much larger population than the Meeker allocation and is in the public interest. Meeker, with a population of 2,098, is slightly larger than Battlement Mesa, which has a population of 1,477. However, the proposed channel 251C operation at Battlement Mesa would provide new primary 1 mV/m service to an area of 10,255 square kilometers and a population of 87,761 persons; by contrast, a 251C operation at Meeker will provide primary 1mV/m service to only 25,542 persons within a 1,393 square kilometer area. The reallocation of Channel C from Meeker to Battlement Mesa will enable Station

²⁰ Id.

See 1990 Census.

First Engineering Statement at 2.

KAYW to provide an additional aural reception service to 108 persons in underserved areas. ²³ The substantial number of additional persons who will be able to receive primary service from Station KAYW for the first time, coupled with the service to underserved areas, more than offsets any detriment resulting from the small number of persons residing in the loss area who stand to lose a <u>proposed</u> new radio service if the proposal is granted. ²⁴ The reallocation of Channel 251C from Meeker to Battlement Mesa would provide a greater benefit to the public because KAYW(FM) will be able to serve a much larger segment of the population.

As demonstrated above, Western Slope's Petition advances the Commission's allotment criteria by establishing a first local transmission service to the community of Battlement Mesa in furtherance of Section 307(b) of the Communications Act. In addition, a reallocation of channel 251C from Meeker to Battlement Mesa, Colorado will serve the public interest by enabling Western Slope to serve a much larger area and population and provide regional as opposed to strictly local service. Accordingly, Western Slope

See Exhibit B, Second Engineering Statement of Timothy C. Cutforth, P.E., dated March 7, 1999 at 2 ("Second Engineering Statement").

The proposed reallotment of Channel 251C from Meeker to Battlement Mesa at the reference coordinates proposed by Western Slope will eliminate proposed 1 mV/m service from KAYW to 648 persons who receive fewer than five aural reception services. Specifically, after the reallotment of channel 251C from Meeker to Battlement Mesa, 116 persons in the loss area will receive service from four aural services, 277 persons in the loss area will continue to receive service from three aural services, and 255 persons in the loss area will continue to receive service from two aural services.

respectfully requests that the Commission issue a Notice of Proposed Rule Making to reallocate FM channel 251C from Meeker to Battlement Mesa, Colorado. Western Slope also requests that the Commission modify the construction permit for Station KAYW(FM) to reflect the reallocation.

Respectfully Submitted,

WESTERN SLOPE COMMUNICATIONS, L.L.C.

Tom W. Davidson, Esq.

Michael K. Hamra, Esq.

Its Attorneys

Akin, Gump, Strauss, Hauer & Feld, L.L.P. 1333 New Hampshire Avenue, N.W. Suite 400 Washington, D.C. 20036 (202) 887-4000

Dated: April 22, 1999

EXHIBIT A FIRST ENGINEERING STATEMENT

EXHIBIT A FIRST ENGINEERING STATEMENT

DECEMBER 1998

Page 1 of 4

PROPOSED RULEMAKING
WESTERN SLOPE COMMUNICATIONS, LLC
98.1 MHz CH.251C
BATTLEMENT MESA, COLORADO



ENGINEERING STATEMENT

Concerning a Petition for Rulemaking to allocate FM Channel 251C to Battlement Mesa, Colorado.

Western Slope Communications, LLC is the permitee of KAYW authorized to construct Class C facilities on Channel 251 to serve Meeker, Colorado. Western Slope Communications, LLC herein requests that the FCC move the allocated Channel 251C to Battlement Mesa, Colorado, and reserve it for KAYW in order to provide a first local FM service to Battlement Mesa.

Meeker is located in a deep valley that runs from east to west and is rimmed with mountains. The unique location of the community of Meeker severely limits the transmitter site locations where city grade coverage of Meeker can be achieved. Although the transmitter site for a Class C facility can often be located anywhere within about 50 km of the community, the unique terrain around Meeker limits this to sites directly east or west of Meeker and excludes coverage to most other population in the region. Battlement Mesa, however, is located in less severe terrain and transmitter sites over a much wider area can meet the city grade coverage requirement allowing much wider lattitude in selecting the transmitter site so as to maximize service to the public.

Vir James Engineers, Broadcast Engineering Consultants, has been retained by the petitioner to determine and show that the above described allocation may be made within the requirements of the FCC Rules and Regulations. There are no existing unused allocations or pending rulemakings for a similar Class C assignment to Battlement Mesa as of the date of this statement.

This would be the first local commercial service to Battlement Mesa, a city of 1477 population according to the 1990 census. Battlement Mesa is not in an urbanized area based on the 1990 Census publication #1990 CPH-2-7.

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PROPOSED RULEMAKING
WESTERN SLOPE COMMUNICATIONS, LLC
98.1 MHz CH.251C
BATTLEMENT MESA, COLORADO

The presently authorized KAYW would serve 25,542 persons within the 1 mV/m contour whereas the proposed Class C at the reference coordinates would serve 87,761 persons within the 1 mV/m primary coverage contour based on the 1990 census. Therefore the proposed change in city of license would increase service to the public significantly.

ALLOCATION STUDY

Availability of Channel 251C to Battlement Mesa as determined by computer aided study of all existing stations, pending applications, and pending rulemeakings within 325 km of the reference site (about 38 km north of Battlement Mesa).

Reference Site

NL: 39 deg 46 min 55 sec WL: 107 deg 58 min 11 sec

All distances from this site to stations were computed using the tables of FCC rules Section 73.698. All distances are in the metric system.

The separations for the proposed channel assignment are as follows:

Battlement Mesa, CO Channel 251C Table of Nearest Facilities

				SEPARA'	TION
CH.	FREQ	COMMUNITY	CALL	ACTUAL	MINIMUM
248C	97.5	NO STATION OR ALLOCAT	ION WITH	IN 325	km
249C3	97.7	ASPEN CO	KSPNALC	116	96
250C	97.9	CORTEZ CO	KISZ	269	241
251C	98.1	COLORADO SPRINGS CO	KKFM	292	290
252C3	98.3	GUNNISON CO	KKYYALC	167	176*
252A	98.3	GUNNISON CO	KKYY	167	165
253C2	98.5	ROOSEVELT UT	KIFX	170	105
254C	98.7	CORTEZ CO	KRTZ	294	105

There are no FM Channels 10.6 or 10.8 mHz removed from 98.1 mHz so no Intermediate Frequency interference can result from the assignment.

PROPOSED RULEMAKING WESTERN SLOPE COMMUNICATIONS, LLC 98.1 MHz CH.251C BATTLEMENT MESA, COLORADO

The KKYY Gunnison, Colorado reserved allocation to upgrade to Class C3 on Channel 252 can be further upgraded to Class C2 on Channel 257 at the present licensed site for KKYY.

Gunnison, CO Channel 257C2
Table of Nearest Facilities

				SEPA	RATION
CH.	FREQ	COMMUNITY	CALL	ACTUAL	MINIMUM
254C	98.7	CORTEZ CO	KRTZ	221	105
255A	98.9	CHAMA NM	NEWCP	182	55
256C3	99.1	GLENWOOD SPRINGS CO	KMTSCP	118	117
257C	99.3	No Station or Allocat:	ion with	in 325	km
258C	99.5	DENVER CO	KKHK	197	188
259C2	99.7	DURANGO CO	KPTE	154	58
260C	99.9	Fruita CO	KEKB	171	105

There are no stations or allocations spaced 10.6 or 10.8 mHz within 50 km from the proposed KKYY Gunnison, CO upgrade rulemaking, therefore, no intermediate frequency interference can result from the proposed upgrade.

The proposed Channel 251C assignment to Battlement Mesa, Colorado meets the separation criteria for assignment as set forth in FCC Section 73.207, as amended to date. In the event that there is alternate interest in serving Meeker, Colorado Channel 233C1 can be assigned without site restriction.

There is no white or grey area served by either the authorized KAYW at Meeker or the proposed allocation to Battlement Mesa, Colorado. Both the presently authorized KAYW service area and the proposed Battlement Mesa service area are fully encompassed by the 0.5 mV/m contour of KRAI Craig, Colorado. Additionally KKGM Grand Junction, KRGS Rifle, KNZZ Grand Junction, and KZKS Rifle, Colorado each serve most of the two service areas and at least 25 other stations cover part of the two primary service areas.

PROPOSED RULEMAKING
WESTERN SLOPE COMMUNICATIONS, LLC
98.1 MHz CH.251C
BATTLEMENT MESA, COLORADO

From this study it has been determined that the Table of FM Allotments, Section 73.202 of the FCC Rules may be amended as follows:

Community	Present	Proposed
Battlement Mesa, CO	none	251C
Meeker, CO	251C	none
Gunnison, CO	252C3, 272C3	257C2, 272C3

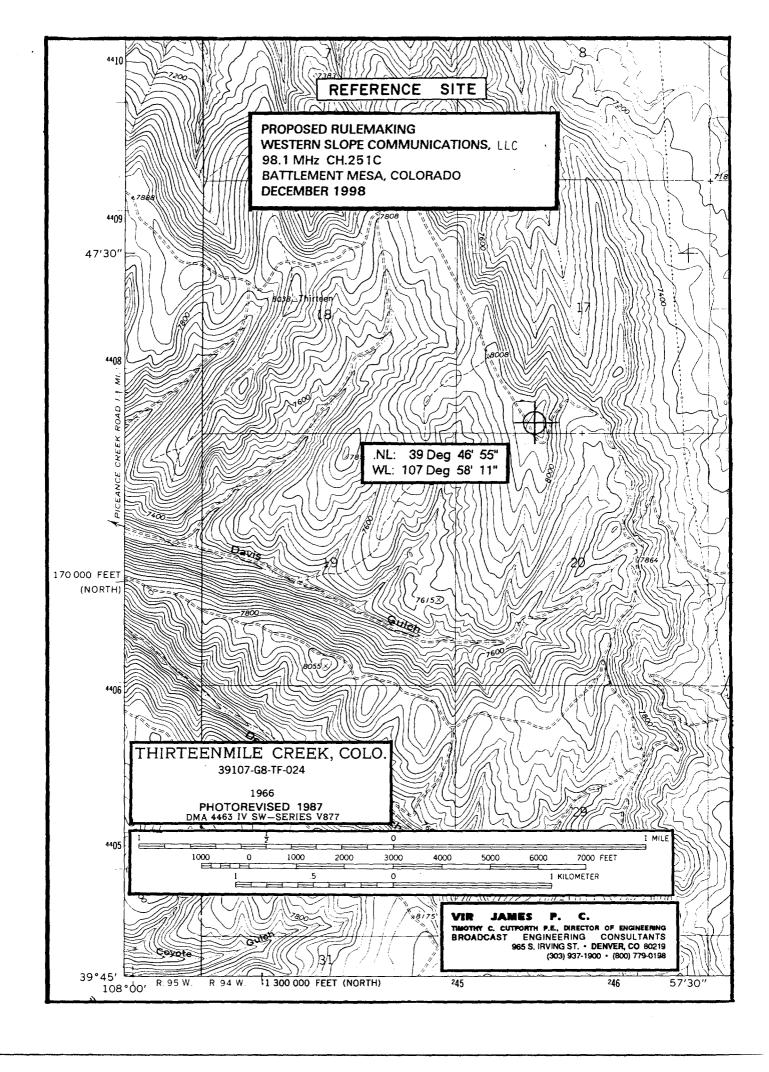
Such an amendment of the Table of Allotments would be in full compliance with the FCC Rules and Regulations as amended to date.

Sing Die CO

Respectfully submitted,

Timothy C. Cutforth P.B.

1 December 1998



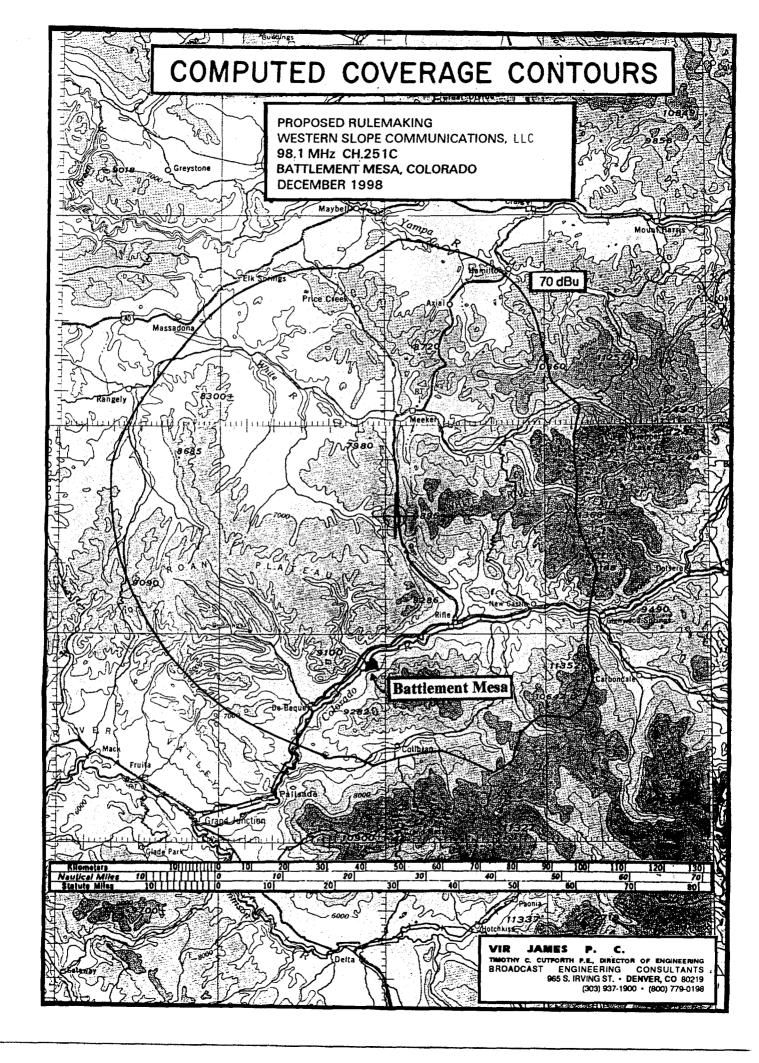


EXHIBIT B SECOND ENGINEERING STATEMENT

Exhibit E-1B-1

STATE OF COLORADO

CITY AND COUNTY OF DENVER

TIMOTHY C. CUTFORTH, BEING DULY SWORN, STATES

That he is a Consulting Radio Engineer with offices located at 965 South Irving Street, Denver, Colorado 80219.

That he is President and Director of Engineering with Vir James, P.C. Consulting Radio Engineers, Denver, Colorado.

That he received a degree of Bachelor of Science, with major in Electrical Engineering from Colorado State University at Fort Collins, Colorado in 1972.

That he is a Registered Professional Engineer (No. 16905) in the State of Colorado.

That he is a certified Professional Broadcast Engineer (No. 50046) by the Society of Broadcast Engineers, Inc.

That he is a member of the Society of Broadcast Engineers, Inc. (No. 3813).

That he is a full member of the Association of Federal Communications Consulting Engineers.

That he is a qualified and experienced Radio and Television Engineer whose qualifications are a matter of record with the Federal Communications Commissions.

That he is a life member of the Broadcast Pioneers.

That the calculations and/or measurements and exhibits in the accompanying report were made by him personally or under his direction, and that all facts contained herein are true of his own personal knowledge or belief; and on such statements made on belief, they are believed to be true.

EXHIBIT B SECOND ENGINEERING STATEMENT

MARCH 1999

EXHIBIT E-1A Page 1 of 2

PROPOSED RULEMAKING
WESTERN SLOPE COMMUNICATIONS, LLC
98.1 MHz CH.251C
BATTLEMENT MESA, COLORADO

ENGINEERING STATEMENT

Concerning a Rulemaking request to move KAYW to Battlement Mesa, Colorado.

Areas and populations served by the authorized KAYW construction permit and the proposed Class C reference facility for Battlement Mesa were compared with the following results:

The proposed Battlement Mesa reference facility would add new primary 60 dBu service to an area 10,255 square kilometres and eliminate authorized 1 mV/m service to an area 1,393 square kilometres. Most of the change area receives 5 or more aural services in either case. There is a small area of both the area lost and the area gained that receives less than 5 services.

An area of 433 square kilometres of rural Moffat county presently receives three aural services including the authorized KAYW construction permit and after the proposed reallocation will receive two aural services. The computed population in this area is 255 persons.

An area of 469 square kilometres of rural Moffat county presently receives four aural services including the authorized KAYW construction permit and after the proposed reallocation will receive three aural services. The computed population in this area is 277 persons.

An area 197 square kilometres of rural Moffat county presently receives five aural services including the authorized KAYW construction permit and after the proposed reallocation will receive four aural services. The computed population in this area is 116 persons.

An area of 197 square kilometres in rural Rio blanco county presently receives three aural services and will with the new proposed allocation receive four aural services. The computed population in this area is 52 persons.

An area of 295 square kilometres of rural Rio Blanco county presently receives four aural services and will with the proposed reallocation receive five aural services. The computed population in this area is 56 persons.

PROPOSED RULEMAKING
WESTERN SLOPE COMMUNICATIONS, LLC
98.1 MHz CH.251C
BATTLEMENT MESA, COLORADO

In summary, in the present KAYW authorized service area 648 of the 25,542 persons served are in underserved areas that would lose one authorized service. Concerning the proposed Battlement Mesa allocation reference facility 108 of the 87,761 persons to be served are in underserved areas that would gain one service. The proposed reallocation does not involve any white or gray areas.

OF COV

Respectfully,

Timothy C. Cutforth P.E.

4 March 1999

MARCH 1999 Page one

STATIONS PROVIDING PRIMARY SERVICE

No.	Frequency	Call	City of License	Power	Coordina	ates	
FM Stations							
1	92.3 MHz	KJYE	Grand Junction CO	100 kW	NL: 39 WL:108	04' 00' 44' 41'	
2	92.7 MHz	ККСН	Glenwood Spg CO	56 kW	NL: 39 WL:107	25' 07' 22' 06'	
3	93.1 MHz	KQIX	Grand Junction CO	100 kW	NL: 39 WL:108	05' 35' 35' 51'	
4	93.7 MHz	KRAI	Craig CO	100 kW	NL: 40 WL:107	34' 35' 36' 29'	
5	95.9 MHz	KIDN	Hayden CO	1.8 kW	NL:, 40 WL:107	25' 48' 05' 32'	
6	96.9 MHz	KBCR	Steamboat Spg CO	10 kW	NL: 40 WL:106	27' 43' 50' 57'	
7	97.7 MHz	KSPN	Aspen CO	3 kW	NL: 39 WL:106	13' 33' 50' 00'	
8	99.1 MHz	KMTS	Glenwood Spgs CO	6.2 kW	NL: 39 WL:107	31' 58' 20' 30'	
9	99.9 MHz	KEKB	Fruita CO	79 kW	NL: 39 WL:108	03' 56' 44' 52'	
10	101.5 MHz	KTUN	Eagle CO	36 kW	NL: 39 WL:106	44' 18' 47' 58'	

No.	Frequeny	Call	City of License	Power	Coordina	ates	
11	103.1 MHz	KZYR	Avon CO	15 kW	NL: 39 WL:106	38 ' 26 '	05" 47"
12	103.9 MHz	KSNO	Snowmass Village CO	6 kW	NL: 39 WL:106	14' 55'	
13	104.1 MHz	KFMU	Oak Creek CO	1.4 kW	NL: 40 WL:106	14' 52'	10" 30"
14	104.3 MHz	KMXY	Grand Junction CO	100 kW	NL: 39 WL:108	03' 44'	
15	104.7 MHz	KSKE	Vail CO	100 kW	NL: 39 WL:106	38 ' 26 '	08" 46"
16	105.3 MHz	KZKS	Rifle CO	60 kw	NL: 39 WL:108	25 ' 07 '	57" 46"
17	106.1 MHz	KNFO	Basalt CO	2 kW	NL: 39 WL:106	18' 57'	55" 36"
18	107.9 MHz	KBKL	Grand Junction CO	100 kW	NL: 39 WL:108	03' 44'	56" 52"

No.	Frequency	Call	City of License Power	Coordinates
AM S	tations			
19	550 kHz	KRAI	Craig CO	NL: 40 32' 45" WL:107 31' 52"
20	580 kHz	KUBC	Montrose CO	NL: 38 25' 32" WL:107 52' 57"
21	610 kHz	KSKE	Vail CO	NL: 39 34' 47" WL:106 24' 54"
22	620 kHz	KSTR	Grand Junction CO	NL: 39 07' 35" WL:108 38' 13"
23	690 kHz	KRGS	Rifle CO	NL: 39 32' 56" WL:107 46' 11"
24	920 kHz	KVEL	Vernal UT	NL: 40 29' 30" WL:109 31' 45"
25	980 kHz	KGLN	Glenwood Springs CO	NL: 39 33' 10" WL:107 19' 48"
26	1100 kHz	KNZZ	Grand Junction CO	NL: 38 57' 02" WL:108 25' 11"
27	1230 kHz	KEXO	Grand Junction	NL: 39 05' 41" WL:108 34' 41"
28	1230 kHz	KBCR	Steamboat Springs CO	NL: 40 29' 19" WL:106 50' 57"
29	1250 kHz	KNEU	Roosevelt UT	NL: 40 17' 13" WL:109 57' 32"
30	1340 kHz	KQIL	Grand Junction CO	NL: 39 05' 35" WL:108 35' 51"
31	1400 kHz	KDTA	Delta CO	NL: 38 45' 38" WL:108 05' 28"

